

1 State of Arkansas  
2 94th General Assembly  
3 First Extraordinary Session, 2023  
4

Call Item 4

# A Bill

SENATE BILL 9

5 By: Senator Hester  
6 By: Representative Ray  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE FREEDOM OF INFORMATION ACT OF  
10 1967; TO EXEMPT CERTAIN RECORDS FROM DISCLOSURE UNDER  
11 THE FREEDOM OF INFORMATION ACT OF 1967, INCLUDING  
12 CERTAIN SECURITY-RELATED RECORDS, RECORDS THAT  
13 REFLECT COMMUNICATIONS BETWEEN THE GOVERNOR AND HIS  
14 OR HER STAFF AND THE SECRETARY OF A CABINET-LEVEL  
15 DEPARTMENT, CERTAIN RECORDS PREPARED BY AN ATTORNEY  
16 FOR USE IN LITIGATION THAT IS PENDING OR ANTICIPATED  
17 IN LIGHT OF A PLAUSIBLE THREAT OF LITIGATION THAT HAS  
18 BEEN DOCUMENTED IN WRITING, AND RECORDS THAT WOULD BE  
19 PRIVILEGED IN CERTAIN CIRCUMSTANCES; TO REQUIRE THAT  
20 THE DIVISION OF ARKANSAS STATE POLICE PROVIDE TO THE  
21 LEGISLATIVE COUNCIL QUARTERLY REPORTS CATEGORIZING  
22 CERTAIN EXPENSES; TO AMEND THE CONDITIONS UNDER WHICH  
23 ATTORNEY'S FEES ARE AWARDED UNDER THE FREEDOM OF  
24 INFORMATION ACT OF 1967; TO DECLARE AN EMERGENCY; AND  
25 FOR OTHER PURPOSES.

## Subtitle

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28 TO AMEND THE FREEDOM OF INFORMATION ACT  
29 OF 1967; AND TO DECLARE AN EMERGENCY.  
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33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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35 SECTION 1. DO NOT CODIFY. LEGISLATIVE INTENT.

36 It is the intent of the General Assembly to adopt and codify the



1 holding in "George v. Ark. Dep't of Human Services," 88 Ark. App. 135 (2004),  
2 in which the Arkansas Court of Appeals held that a court may not assess an  
3 award of attorney's fees against a state official or state employee in his or  
4 her individual capacity in a lawsuit under the Freedom of Information Act of  
5 1967.

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7 SECTION 2. Arkansas Code § 12-8-108(c), concerning information related  
8 to the security of the Governor's Mansion and mansion grounds that is not  
9 subject to disclosure under the Freedom of Information Act of 1967, is  
10 amended to read as follows:

11 (c) Data, records, communications, surveillance footage, security  
12 procedures, emergency plans, and other information compiled or possessed by  
13 the division concerning the ~~Governor's Mansion and mansion grounds~~ duties  
14 performed by the division as required under subsection (a) of this section  
15 are confidential and not subject to disclosure under the Freedom of  
16 Information Act of 1967, § 25-19-101 et seq.

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18 SECTION 3. Arkansas Code § 12-8-108, concerning the security of the  
19 Governor, Governor's Mansion, and State Capitol building and grounds provided  
20 by the Division of Arkansas State Police, is amended to add an additional  
21 subsection to read as follows:

22 (d)(1) Except as provided under subdivision (d)(2) of this section,  
23 the division shall submit to the Legislative Council, or to the Joint Budget  
24 Committee if the General Assembly is in session, a report on a quarterly  
25 basis that identifies by month and budget category the expenses incurred by  
26 the Executive Protection Detail for services provided to the Governor.

27 (2) However, the division shall not include information in the  
28 quarterly report required under subdivision (d)(1) of this section if it  
29 violates subsection (a) of this section.

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31 SECTION 4. Arkansas Code § 25-19-105(b), concerning specific  
32 exemptions to the requirements under the Freedom of Information Act of 1967,  
33 is amended to add additional subdivisions to read as follows:

34 (28) Records that reflect the planning or provision of security  
35 services provided to the:

36 (A) Governor; or



1 ~~substantially justified~~ only if the court finds that the:

2 (A) Plaintiff substantially prevailed; and

3 (B) Position of the defendant was arbitrary or in bad  
4 faith.

5 (2) If ~~the~~ a defendant ~~has~~ substantially prevailed prevails in  
6 ~~the~~ an action, ~~the~~ a court may assess expenses against ~~the~~ a plaintiff only  
7 upon a finding that the action was initiated primarily for frivolous or  
8 dilatory purposes.

9 (e)(1) Notwithstanding ~~subsection~~ subdivision (d)(1) of this section,  
10 ~~the~~ a court shall not assess reasonable attorney’s fees or other litigation  
11 expenses reasonably incurred by a plaintiff against ~~the~~ :

12 (A) The State of Arkansas or a department, agency, or  
13 institution of the state; or

14 (B) An elected or appointed state officer or a state  
15 employee acting within the scope of his or her employment.

16 (2)(A) A plaintiff ~~who substantially prevailed~~ in an action  
17 under this section against ~~the State of Arkansas or a department, agency, or~~  
18 ~~institution of the state~~ a defendant under subdivision (e)(1) of this section  
19 may file a claim with the Arkansas State Claims Commission to recover  
20 reasonable attorney’s fees and other litigation expenses reasonably incurred  
21 only if a court made the findings under subdivision (d)(1) of this section.

22 (B) A claim for reasonable attorney’s fees and litigation  
23 expenses reasonably incurred in an action against the State of Arkansas or a  
24 department, agency, or institution of the state shall be filed with the  
25 commission pursuant to § 19-10-201 et seq. within sixty (60) days of the  
26 final disposition of the appeal under subsection (a) of this section.

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28 SECTION 6. RETROACTIVITY.

29 (a) Section 2 of this act is retroactive to June 1, 2022.

30 (b) Arkansas Code § 25-19-105(b)(28)(A), created in Section 4 of this  
31 act, is retroactive to June 1, 2022.

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33 SECTION 7. DO NOT CODIFY.

34 This act does not limit the ability of Arkansas Legislative Audit to  
35 report information it obtains to the General Assembly.

1           SECTION 8. EMERGENCY CLAUSE. It is found and determined by the  
2 General Assembly of the State of Arkansas that the safety and security of the  
3 Governor and other state constitutional officers is of paramount importance  
4 to the peace, health, and safety of individuals in the State of Arkansas;  
5 that recent threats to certain state constitutional officers and their  
6 families illustrate the need for enhanced protection of records pertaining to  
7 the security of certain state constitutional officers and their families in  
8 order to protect the public peace, health, and safety; that in order to  
9 ensure the continuity of state operations and preserve the secure nature of  
10 services provided to the Governor and other state constitutional officers,  
11 certain records pertaining to the safety and security of the Governor and  
12 other state constitutional officers must be confidential; that this act is  
13 immediately necessary because making public certain records concerning the  
14 safety and security of the Governor and other state constitutional officers  
15 would place the lives and security of the Governor and other state  
16 constitutional officers at a greater risk, thereby risking the peace, health,  
17 and safety afforded to Arkansans; that the public peace, health, and safety  
18 of the State of Arkansas is adversely impacted by inhibiting effective  
19 communications between the Governor and his or her staff and the secretaries  
20 of cabinet-level departments regarding the formulation of policies and the  
21 making of decisions critical to the operation of the state; and that this act  
22 is immediately necessary to enable state government officials to effectively  
23 communicate in order to make decisions that serve the best interests of the  
24 State of Arkansas in an efficient and secure manner. Therefore, an emergency  
25 is declared to exist, and this act being immediately necessary for the  
26 preservation of the public peace, health, and safety shall become effective  
27 on:

28                   (1) The date of its approval by the Governor;

29                   (2) If the bill is neither approved nor vetoed by the Governor,  
30 the expiration of the period of time during which the Governor may veto the  
31 bill; or

32                   (3) If the bill is vetoed by the Governor and the veto is  
33 overridden, the date the last house overrides the veto.

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